

OGC Has Reviewed

Contract No. XG-1495
24 April 1956

**STATEMENT OF FACTS AND RECOMMENDATIONS OF CONTRACTING OFFICER
CONCERNING AN ALLEGED ERROR OF [REDACTED]
IN BID DATED FEBRUARY 11, 1955 UNDER CONTRACT NO. XG-1495
FOR FURNISHING FIBRE-BOARD SHEETS**

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The Contracting Officer on 4 February 1955 issued invitation No. 46-55, requesting bids on the following described fibre-board sheets:

<u>Item</u>	<u>Description</u>
	Fibre-board sheets, 350 lbs. bursting strength, Grade V3C equal to material specified in JAN-P-108 type CP for corrugated fibre-board boxes. No marking or identifying symbols to appear on material in sizes as follows:

1.	36-1/2" x 140"	3600 sheets
2.	60" x 80"	3600 sheets
3.	44" x 90"	3600 sheets
4.	24" x 60"	3600 sheets

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On February 11, 1955 the [REDACTED], submitted the following bid:

1.	36-1/2" x 140"	3600 sheets	.8606	\$3098.16
2.	60" x 80"	3600 sheets	.71	\$2556.00
3.	44" x 90"	3600 sheets	.2582	\$ 929.52
4.	24" x 60"	3600 sheets	-----	\$ -----

As will be noted, the bid, as submitted, indicated an intent to bid on items 1, 2 and 3.

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In evaluating all bids received (see enclosure 1, abstract of bids), it was noted that [REDACTED] appeared to be unusually low on item number 3. Noting this, the negotiator, [REDACTED] telephone [REDACTED] of said company, on March 3, 1955, and asked that he verify the bid price. [REDACTED] thereupon, did confirm his previously submitted bid as being correct. Thereafter, on March 8, 1955 award was made to [REDACTED], as to items 2 and 3, in the amount of \$3,485.52 (contract having been mailed on March 21, 1955).

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On or about March 24, 1955 [] phoned the Contracting Officer, advising that he (the Contractor) had made a serious error in his bid, details of which error were confirmed in his letter dated March 25, 1955, (See enclosure 2). In brief, his alleged error resulted from an inadvertent transposition in typing from the bidders work sheet. The contention is made that bidder intended to bid on items 2, 3 and 4, and submits that he contends to be his original work sheet as verification. The alleged error is claimed to have resulted by the typist transposing these bid prices opposite items 1, 2 and 3 rather than having them read opposite items 2, 3 and 4, as intended by the bidder.

The Contractor points out that unless it is given relief it will suffer a substantial loss in manufacturing this order. The Contractor apparently expected this contract to amount to \$5,654.16 for manufacturing items 2 and 3, instead of the \$3,485.92 for which the contract was actually awarded, or a difference of \$2,168.64. Inasmuch as this Contractor would not have been low bidder, if its intended bid had been utilized, it agrees to settle its claim by using the bid prices of the otherwise low bidder []

The Contractor is therefore proposing that the contract be reformed to give effect to his intended bid, except that the Contractor will not claim prices in excess of the low bid as otherwise submitted by the []

The Contractor's intended bid would have priced out under the contract at \$5,654.16 whereas the bid of [] (otherwise low bidder on items 2 and 3) would have priced out at \$4,966.92. Therefore, Contractor's claim to relief is for an additional \$1,481.40 being the difference between []'s bid of \$4,966.92 and the awarded contract price of \$3,485.92.

Enclosure 3 constitutes the Contracting Officer's decision, which denied Contractor's requested relief. The Contractor has, however, by its letter of June 1, 1955 (Enclosure 4), pursued its claim under the terms of the "disputes" clause.

Even though presented under the "disputes" clause, Contractor's claim is essentially for reformation of the contract, because of a mistake in bid. Such relief is considered to be beyond the scope of the Contracting Officer's authority. It is therefore, recommended that the matter be referred to the Comptroller General of the United States for decision.

While the Contractor's mistake in bidding may have been inadvertent and innocent, and, in fact, upon all the evidence, appears so to have been, yet, the Contracting Officer recommends against granting the requested relief. The Contractor was requested to, and did, confirm his bid prior to award.

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To now permit the Contractor, after award, to claim additional reimbursement up to but not to exceed the bid of the otherwise low bidder would make a farce of the well developed concepts of competitive (advertised) government procurement. A precedent in this direction would permit a "negligent" bidder to assure himself of the contract award and then to obtain reimbursement equal to the bonafide "low bidder" and at the same time effectively deny the business to such bonafide "low bidder".

It is therefore, recommended that this Contractor be denied any relief in the premises.

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[REDACTED]
Acting Deputy Chief (Contracts), PD
Contracting Officer

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Enclosures:

1. Abstract of Bids, Invitation 46-55
2. Letter dated 3/25/55 [REDACTED] /Contracting Officer
3. Letter dated 5/17/55 Contracting Officer/[REDACTED]
4. Appeal Letter dated 6/1/55 [REDACTED] /CIA
5. Invitation, Bid and Award (Supply Contract) XI-1495

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